COURT OF APPEALS DECISION DATED AND FILED

May 22, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP1527

Cir. Ct. No. 2016TR11930

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

CITY OF EAU CLAIRE,

PLAINTIFF-APPELLANT,

V.

DEBORA ANN WEST,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Eau Claire County: WILLIAM M. GABLER, SR., Judge. *Reversed and cause remanded for further proceedings*.

¶1 HRUZ, J.[1] Debora West was cited for violating WIS. STAT. § 346.675(1), which imposes liability upon a vehicle owner when his or her

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

vehicle is operated in the commission of a "hit-and-run."[2] The circuit court concluded West was not guilty and dismissed this citation. While West owned the vehicle involved in the hit-and-run incident, the court interpreted § 346.675(4)(b)2. as providing West with a defense to liability because she had "negligently" "los[t] control of her vehicle and of its whereabouts" before the accident.

¶2 The City now appeals, arguing the circuit court erred in its interpretation and application of WIS. STAT. § 346.675.[3] As explained below, we agree with the City. We thus reverse the order finding West not guilty and dismissing the citation, and we remand for the court to hold further proceedings consistent with this opinion.

BACKGROUND

¶3 Four witnesses testified at the trial on West's citation. Samantha Wensel testified that she was inside her home when she heard a loud noise. When Wensel investigated that noise, she realized her vehicle had been struck while it was parked on the side of the road outside her home. Wensel observed her vehicle had suffered "major front-end damage," and she also discovered an unfamiliar license plate embedded in her vehicle. At no time was Wensel contacted by either

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[2] When we use the term "hit-and-run" in this opinion, we are referring collectively to WIS. STAT. §§ 346.67(1), 346.68, and 346.69, as WIS. STAT. § 346.675 cites those sections when discussing the commission of a hit-and-run violation. Those sections impose duties on operators of vehicles that strike either a person or an occupied vehicle, § 346.67(1), an unattended vehicle, § 346.68, or property adjacent to a highway, § 346.69. The citation in this case involved an underlying violation of § 346.68.

[3] West was pro se in the circuit court, and she has not filed a brief in response to this appeal. The City moved for summary reversal due to West's "default." *See* WIS. STAT. RULE 809.83(2). We denied that motion, and we elect to address the merits of this appeal.

the driver of the vehicle or its owner regarding the incident. Wensel reported the incident to the police.

¶4 Officer Nate Ollmann responded to Wensel's report, and he determined another vehicle had struck Wensel's vehicle and then fled the scene. Ollmann ran the number of the license plate left at the scene through Wisconsin Department of Transportation records and found that the plate belonged to a vehicle registered to West. Ollmann received no other information regarding the collision, and neither he nor other officers in the area were able to locate the vehicle suspected of being involved in the hit-and-run.

¶5 Officer Jesse Zurbuchen began his investigation of the incident by telephoning West. In this call, West confirmed that she owned the vehicle to which the license plate belonged, but she claimed not to know about the accident. West told Zurbuchen that she had "borrowed" the vehicle to her niece, Elizabeth Price, but West also said Price "possibly was letting her boyfriend, David Bridges, drive the vehicle." Zurbuchen informed West that if the driver of the vehicle could not be identified, she would be cited for the violation as the owner of the vehicle. West provided no further information regarding the driver of her vehicle at the time when the hit-and-run occurred.

¶6 Zurbuchen interviewed Price a few days later. Price was also unaware of any accident involving West's vehicle, and Zurbuchen ruled out Price as the driver because she had been in jail at the time of the incident. However, Price informed Zurbuchen that she had "borrowed" West's vehicle to Bridges, and that she knew Bridges had allowed his daughter, Morgan, to drive the vehicle during that time. Price gave Bridges' phone number to Zurbuchen.

¶7 Zurbuchen next spoke with Bridges, who expressed unfamiliarity with any accident and said he had been allowing Morgan to drive the vehicle. Bridges told Zurbuchen where West's vehicle was currently located. Bridges also said he would talk to Morgan and "get back to [Zurbuchen] about who was driving," but Zurbuchen testified that Bridges never contacted him with that information. At no point did Bridges provide contact information, a date of birth, or a last name for Morgan.

¶8 Zurbuchen discovered West's vehicle at the location Bridges had provided. The vehicle was missing its front license plate and had front-end damage consistent with having been in an accident. Zurbuchen testified he was unable to determine the identity of the driver based upon his investigation, and West was served with a citation for having violated WIS. STAT. § 346.675.

¶9 West testified she owned the vehicle that was determined to have struck Wensel's parked vehicle. She further testified she was allowing Price to use her vehicle, and she last saw it "a couple weeks" before the incident was alleged to have occurred. West expressed some familiarity with Bridges, but she "ha[d] no idea who Morgan [wa]s." Neither Bridges nor Morgan testified.

¶10 After hearing the above testimony, the circuit court found that West's vehicle had struck Wensel's vehicle and that neither West nor Price knew who was operating West's vehicle when that incident occurred. The court further determined the evidence failed to establish either Bridges or Morgan as the operator of the vehicle at the time of the incident. While the court interpreted WIS. STAT. § 346.675(1) as imposing "strict liability or absolute liability" on the owner of a vehicle, it also interpreted the statute as providing West with a defense:

> that language that's contained in … [§ 346.675(4)(b)2.] leads me to conclude that … if an owner of a vehicle can establish at some point in time that he or she wasn't the owner of the vehicle,[4] then they aren't liable. And it seems to me … that's the facts of the situation here.
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> Debora West didn't keep good control over her vehicle. She let it out to her niece. … [T]his would be a different case if, perhaps, Elizabeth Price had been driving, but she wasn't. And Debora West didn't know who was driving. She didn't give Bridges permission. She didn't give Morgan permission. And so just because a person, such as Debora West, loses control of her vehicle and of its whereabouts—albeit it, even negligently—the statute was not meant to cover this type of unusual—and it is unusual—unusual situation.

¶11 Based on its interpretation and application of WIS. STAT. § 346.675(4)(b)2., the circuit court concluded that West was not guilty of violating § 346.675(1). The City now appeals from the dispositional order that dismissed the citation.

DISCUSSION

¶12 The sole issue on appeal is whether the circuit court properly interpreted WIS. STAT. § 346.675 and applied it to the above facts.[5] Interpretation

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[4] We are unsure whether the circuit court misspoke when it used the terms "owner of the vehicle" for the second time in this sentence. This uncertainty is due to the undisputed fact that West owned the vehicle that committed the hit-and-run, the questions relating to the identity of the driver here, and WIS. STAT. § 346.675(4)(b)2. not referring to proof of "ownership." The court instead may have meant to say "driver" or "operator" of the vehicle—or perhaps "possessor" of the vehicle—given its ensuing application of the statute to the facts. No matter the court's word choice, we explain below that West not being the "driver" or not directly "possessing" the vehicle at the time of the hit-and-run did not establish a defense under the facts of this case. And given its acknowledgement that West owned the vehicle, we do not understand the court to have found, as a factual matter, that the vehicle ceased being registered to West before the time of the alleged hit-and-run. Such a finding would lack support in the record.

[5] We have not discovered a Wisconsin case that has addressed WIS. STAT. § 346.675 since its enactment. *See* 2005 Wis. Act 411.

and application of a statute are questions of law that this court reviews de novo. ***County of Fond du Lac v. Muche***, 2016 WI App 84, ¶6, 372 Wis. 2d 403, 888 N.W.2d 12. When interpreting a statute, we must determine the statute's meaning so that it may be given its full, proper, and intended effect. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. Our analysis begins with the plain language of the statute. ***Id.***, ¶45. Statutory language must be interpreted based upon its common, ordinary and accepted meaning, except that technical or specially defined words or phrases are given their technical or special definitional meanings. ***Id.*** We interpret statutory language in the context in which it is used, as part of a whole and not in isolation, and to avoid absurd or unreasonable results. ***Id.***, ¶46.

¶13 WISCONSIN STAT. § 346.675 contains four subsections. Subsection (1) provides, in relevant part, that "the owner of a vehicle operated in the commission of a [hit-and-run] violation … shall be liable for the violation as provided in this section." Generally speaking, subsec. (2) concerns the time in which to report a hit-and-run violation and the information that should be included in that report. In turn, subsec. (3) speaks to a traffic officer's investigation of a hit-and-run violation, and it sets forth the process by which a citation of the violation may be served.

¶14 Our interpretation of the statute focuses on the fourth subsection. WISCONSIN STAT. § 346.675(4)(a) states: "Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation." Paragraph (b) outlines five defenses that are available to a vehicle's owner. The defense at issue here is § 346.675(4)(b)2., which provides, in relevant part:

> If the owner of the vehicle … provides a traffic officer with the name and address of the person *operating the vehicle at the time of the violation* and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the [hit-and-run] violation, then the person operating the vehicle shall be charged [with that violation] and the owner … shall not be charged under this section.

(Emphasis added.) Also significant is § 346.675(4)(b)5., which creates a defense to the owner's liability when "another person has been convicted … for the [hit-and-run] violation specified in sub. (1)."[6]

¶15 It is undisputed that West owned the vehicle that struck Wensel's unattended vehicle. On that evidence alone, and regardless of whether West was the driver, West was liable under WIS. STAT. § 346.675(1), as she was the owner of a vehicle operated in the commission of a hit-and-run violation, specifically WIS. STAT. § 346.68. The issue, however, is whether the circuit court correctly concluded § 346.675(4)(b)2. provided West with a defense to liability under the facts of this case.

¶16 WISCONSIN STAT. § 346.675(4)(b)2. does not provide a defense to West under these facts. For a vehicle owner to avoid liability, subdiv. (4)(b)2. expressly requires the owner to provide an officer with both: (1) "the name and address of the person operating the vehicle at the time of the violation"; and (2) "sufficient information" for an officer "to determine that probable cause d[id] not exist to believe" that the owner operated the vehicle at the time of the

[6] The remaining defenses are not implicated in this case, as they concern scenarios where the vehicle involved in the hit-and-run is reported stolen or is owned by either a lessor or a dealer. *See* WIS. STAT. § 346.675(4)(b)1., 3.-4.

violation. *See **id.*** The statutory language plainly requires, at a minimum, that an owner provide both sets of information to the officer in order to avail himself or herself of this defense.

¶17 The record establishes that West failed to provide "the name and address of the person operating the vehicle at the time of the violation." The circuit court made no factual finding to the contrary. Rather, West told Zurbuchen she had lent her vehicle to Price, whom Zurbuchen was able to contact. But Zurbuchen later learned Price could not have been the driver at the time of the incident. As the circuit court acknowledged, Zurbuchen's investigation ultimately yielded no conclusive evidence on the identity of the person who operated West's vehicle at the time of the hit-and-run violation, and nobody else was charged or convicted of a hit-and-run violation stemming from the incident. Even assuming Zurbuchen could have ruled out West as the driver of the vehicle based upon the information she provided, pursuant to WIS. STAT. § 346.675(4)(b)2. West was still required to identify the actual driver's identity in order to avoid liability. She never did so.

¶18 Moreover, the notion that West may have inadvertently lost track of who was driving her vehicle is immaterial under WIS. STAT. § 346.675(4)(b)2. West may not have had "possession" of the vehicle at the time of the incident, but § 346.675 refers to a vehicle's "owner," a term that is defined in WIS. STAT. § 340.01(42) as "a person who holds the legal title of a vehicle." Simply put, West admitted (and the circuit court found) that she owned the vehicle.

¶19 Finally, while the circuit court fittingly branded this situation as "unusual," the statute nevertheless anticipates the imposition of liability on a vehicle's owner under this very fact pattern. The purpose of WIS. STAT.

§ 346.675, as is apparent from its text, is to ensure that a vehicle owner keeps sufficient watch over who is operating his or her vehicle, as well as providing traffic officers with the information necessary to prosecute hit-and-run violations involving the owner's vehicle. *See* ***Kalal***, 271 Wis. 2d 633, ¶49 (scope, context and purpose are relevant to a plain-meaning interpretation of a statute as long as they are ascertainable from the text and the structure of the statute itself). Pursuant to § 346.675, law enforcement was authorized to cite West with the violation here because she failed to provide sufficient information to aid the hit-and-run investigation, such that no other person could be charged.

¶20 In all, the plain language of WIS. STAT. § 346.675(4)(b)2. leads us to conclude West is not entitled to a statutory defense for the violation of subsec. (1). We reverse the order finding West not guilty and dismissing the citation, and we remand for the circuit court to hold further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.